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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 ANTOINE W. HARRIS,

Case No.: 3:19-cv-00542-MMD-WGC

8 Plaintiff,

ORDER

9 v.

Re: ECF No. 28

10 NAPHCARE, *et al.*,

11 Defendants.

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13 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 28). Plaintiff
14 bases his motion on the fact that (1) he is "no longer house (sic) in Washoe County Detention
15 Facility where this violation on my constitutional rights accrued (sic)," (2) Plaintiff cannot conduct
16 interrogatories or depositions because he is housed in another institution in another state,"
17 (3) Plaintiff does not "have money to hire counsel of his own," (4) the substantive issues and
18 procedural matters in this case are too complex for Plaintiff's comprehension and abilities,
19 (5) "there is evidence that is very important to my case that is in Washoe County Detention
20 Facility's kiosk that I need and cannot retrieve because I am no longer housed at that facility,"
21 (6) the facility where Plaintiff is currently housed "is not accommodating me as far as me being a
22 pro per litigant, which is making the preparation of my case hard on me," and (7) "the discovery
23

1 phase will be virtually impossible for me to conduct being housed in another institution and in
2 another state.” (*Id.* at 1, 2.)

3 While any *pro se* inmate such as Mr. Harris would likely benefit from services of counsel,
4 that is not the standard this court must employ in determining whether counsel should be appointed.
5 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

6 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
7 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
8 Court has generally stated that although Congress provided relief for violation of one’s civil rights
9 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
10 federal court and not a right to discover such claims or even to litigate them effectively once filed
11 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

12 In very limited circumstances, federal courts are empowered to request an attorney to
13 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
14 however, are exceedingly rare, and the court will grant the request under only extraordinary
15 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
16 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

17 A finding of such exceptional or extraordinary circumstances requires that the court
18 evaluate both the likelihood of Plaintiff’s success on the merits and the *pro se* litigant's ability to
19 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
20 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
21 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Thus far, Plaintiff has been able to
22 successfully articulate his claims.

1 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

2 If all that was required to establish successfully the
3 complexity of the relevant issues was a demonstration of
4 the need for development of further facts, practically all
5 cases would involve complex legal issues. Thus,
6 although Wilborn may have found it difficult to
articulate his claims *pro se*, he has neither demonstrated
a likelihood of success on the merits nor shown that the
complexity of the issues involved was sufficient to
require designation of counsel.

7 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
8 the request for appointment of counsel because the Plaintiff failed to establish the case was
9 complex as to facts or law. 789 F.2d at 1331.

10 The substantive claims involved in this action are not unduly complex. Plaintiff's First
11 Amended Complaint was allowed to proceed on the portion of claim 1 alleging Fourteenth
12 Amendment inadequate medical care against Defendants Sgt. Venn, Dr. Eloy Ituarte, and
13 Frank Akpati, and the portion of claim 1, alleging First Amendment retaliation, against Defendant
14 Sgt. Venn. (ECF No. 21 at 9.) These claims are not so complex that counsel needs to be appointed
15 to prosecute them.

16 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
17 the likelihood of success on the merits of his claims. Plaintiff has not provided any evidence, nor
18 has he made any argument in his motion for appointment of counsel, showing that he is likely to
19 prevail on the merits of his claim.

20 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
21 Counsel (ECF No. 28).

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1 **IT IS SO ORDERED.**

2 Dated: July 27, 2021.

3 *William G. Cobb*

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5 WILLIAM G. COBB
6 UNITED STATES MAGISTRATE JUDGE
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